THE HON'BLE SRI JUSTICE P.S. NARAYANA

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WRIT PETITION Nos.12361 and 12440 of 2007

Dated:

WRIT PETITION No.12361 of 2007

Between

Joga Venkataramana

…Petitioner

And

Sri Seetharamachandra Swamy vari Devasthanam,
Bhadrachalam, rep. by Executive Officer,
At Bhadrachalam, Khammam District

…Respondent

WRIT PETITION No.12440 of 2007

Between

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…Petitioner

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Sri Seetharamachandra Swamy vari Devasthanam,
Bhadrachalam, rep. by Executive Officer,
At Bhadrachalam, Khammam District

…Respondent

THE HON'BLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION Nos.12361 and 12440 of 2007

COMMON ORDER:

These two writ petitions are being disposed of by a common order.

2. The petitioner-Joga Venkataramana filed W.P.No.12361 of 2007 praying for a writ of mandamus declaring the public auction notice issued by the respondent in Proc.Rc.B2/1364/2007-8, dated 09.06.2007 as published in local Eenadu news paper, dated 12.06.2007 concerning item No.1, as illegal, arbitrary, contrary to earlier notification dated 12.05.2007 and violative of principles of natural justice and consequently to set aside the same and also to direct the respondent to continue the petitioner as licensee (right to take photographs in the premises of Sri Seetharamachandra Swamy Vari Devasthanam, Parnasala, Khammam District) and to pass such other suitable orders.

3. This Court issued rule nisi on 18.06.2007 and ordered notice.

4. W.P.No.12440 of 2007 is filed by the self same writ petitioner praying for a writ of mandamus declaring the notice issued by the respondent in Rc.No.B2/1364/2007, dated 09.06.2007, served on the petitioner on 13.06.2007 at 8.30 p.m., as illegal, arbitrary, contrary to record and violative of principles of natural justice and consequently to set aside the same and to pass such other suitable orders.

5. Rule nisi was issued on 15.06.2007 and in W.P.M.P.No.15506 of 2007 this Court made the following order:

> "Pending further orders, the auction under the impugned auction notice dated 09.06.2007 may go on, but the licence, if any, granted shall be subject to further orders in the writ petition.
>
> There shall also be a direction to the respondent not to initiate any proceedings against the petitioner for recovery of the

amounts pursuant to the notice No.B2/1364/2007, dated 09.06.2007."

6. In this W.P.No.12440 of 2007, a counter affidavit has been filed.

7. The learned counsel representing the writ petitioner would maintain that already third parties interest had intervened and in the light of the facts and circumstances of the case forfeiture of the amount cannot be sustained. Hence, at least relating to the amount deposited by the petitioner, refund may be ordered.

8. On the contrary, the learned Standing Counsel representing the respondent had taken this Court through the contents of the counter-affidavit and also had drawn the attention of this Court to Rule 17 of the Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Immovable Properties and other rights (Other than Agricultural lands) leases and Licenses Rules, 2003 (for short 'the Rules'), and would maintain that in view of the fact that default of payment had been committed by the petitioner, the respondent is at liberty to forfeit the amount and hence refund also cannot be ordered. The learned counsel also would submit that even otherwise that was the relief, which has been prayed for in the writ petition.

9. Heard the counsel.

10. In W.P.No.12361 of 2007 it is stated that in response to the respondent Devasthanam's public auction notice, dated 12.05.2007, regarding the grant of license for photography in the premises of Sri Seetharamachandra Swami Vari Devasthanam at Parnasala, the petitioner submitted his bid and that there were several other bidders also. But, however, as the bid of the petitioner was highest, he was declared as the successful bidder with the bid amount of Rs.3,02,000/-. It is further stated that the license is for a period of one year from 16.05.2007 to 15.05.2008 and the petitioner had paid a sum of

Rs.1,00,000/- on 16.05.2007 itself and had paid the balance amount of Rs.2,02,000/- on 04.06.2007 (Rs.52,000/- by way of cash and Rs.1,50,000/- by way of a cheque, dated 05.06.2007, vide cheque No.835753 of Andhra Bank, Bhadrachalam branch). It is also stated that the petitioner had to sell his tractor to furnish the bid amount and that under the instructions of the Executive Officer from 16.05.2007 onwards he has been exercising his license rights i.e., of taking photographs of devotees. It is further stated that the petitioner had invested huge amount in purchasing the equipment by which he is able to provide the devotees their photographs instantaneously. It is further stated that the petitioner submitted a representation on 11.06.2007 requesting the respondent to communicate if any compliance of any norms were required in respect of his license as the Devasthanam has conducted such an auction for the first time. As the matter stood thus, all of a sudden, the respondent had issued the impugned public notification dated 09.06.2007 published on 12.06.2007 in the local Eenadu news paper stating that they would be conducting an auction again for the same work on 18.06.2007 at 11.00 a.m. The petitioner is concerned with item No.1 of the impugned notification. It is stated that without reference to the earlier auction, without issuing any notice to the petitioner and without cancelling his bid, the respondent had issued the impugned notification. It is also stated that the auction concerning item No.1 is ex facie illegal, arbitrary, contrary to record and violative of principles of natural justice. Certain other additional facts also had been narrated in the affidavit filed in support of this writ petition.

11. In W.P.No.12440 of 2007 the petitioner had virtually repeated the same facts, which are being offered in the affidavit filed in support of W.P.No.12361 of 2007, and no doubt had offered certain other additional facts as already referred to supra.

12. It is stated that the public auction notice was issued on

12.05.2007 regarding grant of license for photography, that the petitioner was the highest bidder and that the payment of the amount also had been specified. It is also stated that the petitioner made a representation on 11.06.2007 requesting the respondent to communicate if any compliance of any norms were required in respect of the license. While the matter stood thus, all of a sudden, the respondent had issued public notification, dated 09.06.2007, published on 12.06.2007 in the local Eenadu news paper stating that they would be conducting an auction again for the same work on 18.06.2007 at 11.00 a.m. The petitioner was concerned with item No.1 of the said notification. It is stated that without issuing any notice and despite the filing of W.P.No.12361 of 2007 further auction cannot be sustained. It is also stated that after filing the writ petition, the respondent had served the petitioner with the impugned notice on 13.06.2007 at 8.30 p.m., as if it was issued on 09.06.2007, cancelling the earlier auction on the ground that the petitioner failed to deposit the bid amount within 24 hours. The said notice is ex facie illegal, arbitrary, contrary to the record and violative of principles of natural justice. It is further stated that after receipt of his representation, dated 11.06.2007, the respondent had initiated the impugned action, which is illegal. The impugned notice had been issued without issuing any prior notice and served on the petitioner after the publication of the second notification, which is not only illegal but also arbitrary. It is further stated that the respondent had forfeited the amount deposited by him and that the respondent had collected the entire amount without any protest, issued receipt and allowed him to commence the work. As such the reasoning given by the respondent in the impugned notice is not at all tenable. It is an after thought to defeat the rights of the petitioner. In such circumstances, the petitioner being left with no other option approached this Court by praying for the reliefs as referred to above.

13. A counter-affidavit also had been filed in this writ petition. In the counter-affidavit, in reply to paragraphs 2 to 4 of the affidavit filed in support of the writ petition, it is stated that the Executive Officer and Deputy Commissioner of Diety Sri Seetharamachandra Swamy Vari Devasthanam, Bhadrachalam issued auction notice, dated 12.05.2007, for the purpose of grant of license to Photographers to take photographs of pilgrims those who visit Sri Seetharamachandra Swamy Vari Devasthanam at Parnasala, which is also under the management of Bhadrachalam Devasthanam. It is also stated that pursuant to the auction notification, dated 12.05.2007, the petitioner participated in the auction along with some other bidders. After opening of the bids of the above auction notification, the petitioner was the successful bidder with highest bid amount of Rs.3,02,000/-. In the auction notification there was a condition that any bidders can participate in the bids and that they have to deposit the bid amount within 24 hours from the date of auction. The respondent informed the petitioner that he was declared as successful bidder and that he has to deposit the entire bid amount to a tune of Rs.3,02,000/- within 24 hours from the date of opening of the bids. Accordingly, the petitioner paid an amount of Rs.10,000/- towards E.M.D. and after he was declared as successful bidder he paid an amount of Rs.90,000/- on the same day i.e., on 16.05.2007 towards the part payment of the above said bid amount, and that as per the auction notice the successful bidder should pay the total bid amount within 24 hours from the date of auction. In the instant case, the petitioner has to pay the balance of bid amount to a tune of Rs.2,02,000/- on or before 17.05.2007, but the petitioner failed to do so. But however the petitioner was taking photographs at Parnasala without there being any permission from the competent authority. This itself shows the petitioner's nature. For that the petitioner has to pay the amount to the respondent. Thereafter the respondent cancelled the above auction notification and issued notice to the petitioner on 09.06.2007 and the same was received by the

petitioner. Thereby the respondent forfeits the EMD amount of the petitioner.

14. It is further stated that it is true that after cancellation of first auction notice the respondent got issued another auction notice on 09.06.2007 which was published in Eenadu daily news paper on 12.06.2007 inviting the interested photographers for taking photos in the premises of Sri Seetharamachandra Swamy Vari Devasthanam, Parnasala. The petitioner has not participated in the second auction notification, dated 12.06.2007, but some other persons had participated. The second public auction notification was also cancelled on the ground that the bidders have not paid the entire bid amount. Again the respondent issued third public auction notification and called for the applications on 30.06.2007. But the petitioner has not participated in the third public auction also. In the third auction, Mr.J.Naveen is the highest bidder and he had paid the entire bid amount to a tune of Rs.11,53,000/-. Therefore, the same was allotted to the highest bidder on the same day itself and license was also granted to him to take photographs from 01.07.2007 onwards. For that the respondent issued a Permission Letter in his Rc.No.B2/1364/2007, dated 01.07.2007 and the same is filed in the material papers. The entire exercise was done by the respondent under G.O.Ms.No.866, dated 08.03.2007. Hence, all the contentions raised by the petitioner are false and he had not complied with the conditions, which are imposed by the respondent in the auction notification.

15. Rule 17 of the Rules issued in G.O.Ms.No.866, Revenue (Endowments-I) Department, dated 08.08.2003, specifies that in default of payment of rent for lease or license, the lease or license is liable for termination and the lessee or licensee is liable for eviction and the security deposit is also liable to be forfeited.

16. In the light of the respective stands taken by the parties, inasmuch as the third party interest already had intervened, in the

absence of such third party, who may be the affected party, if any adverse orders to be passed in these writ petitions, the relief prayed for in these writ petitions cannot be granted as such. The principal question, which had been argued in elaboration, is that the respondent having received the amount without any protest subsequent there to, taking a stand of cancellation that the amount is liable to be forfeited for violation of the conditions cannot be a sustainable stand. It is also pertinent to note that the conduct of the petitioner in taking the photographs at Parnasala without there being any permission from the competent authority also is not justifiable. In the facts and circumstances of the case, it is needless to say that at any rate on the ground of equity there cannot be any unjust enrichment. Since it is stated that the petitioner had derived some benefits by taking photographs at Parnasala without there being any permission from the competent authority for some time, let the period be taken into consideration and let the respondent consider the refund of the rest of the amount. Taking into consideration the over all facts and circumstances of the case, this Court does hold that the respondent should take an appropriate decision in this regard, which will be just and proper, keeping the ground of equity in mind and also the interest of the institution inasmuch as it is stated that the petitioner had derived some advantage by taking photographs at Parnasala for some period.

17. With the above observations, these writ petitions are disposed of. No costs.

P.S.Narayana, J

Date: 02.11.2007
Note: L.R. Copy to be marked
(By Order)
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